IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division

IN RE: GARLOCK SEALING TECHNOLOGIES LLC, et al., Debtors.[1]	Case No. 10-BK-31607 Chapter 11 Jointly Administered

COLTEC INDUSTRIES INC.'S RESPONSE TO THE ACC AND FCR'S

POST-TRIAL BRIEFS

[1]The debtors in these jointly administered cases are Garlock Sealing Technologies LLC; Garrison Litigation Management Group, Ltd.; and The Anchor Packing Company (hereinafter "Garlock" or "Debtors").

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I. SUMMATION OF ARGUMENT

In its Estimation Order, the Court recognized that the aggregate estimation exercise in these cases would be different from what took place in earlier asbestos Chapter 11 cases because the threshold question of liability is contested by the Debtors. *Estimation Order* ¶¶15-16 (Dkt. 2012). The divergent evidentiary presentation of the parties at the Estimation Trial demonstrated why this difference matters.

The Official Committee of Asbestos Personal Injury Claimants (the "ACC") and the Future Claimants' Representative (the "FCR") (together, the "Claimants' Representatives"), wedded as they are to theories and methodologies used in prior estimation proceedings where liability was essentially uncontested, sidestepped this critical threshold determination and avoided their requisite burden of proof. The Claimants' Representatives have instead asked the Court to buy into a set of privileged rules they themselves have created and controlled over the past three decades. Nothing in their Post-Trial Briefs is new – the Claimants' Representatives' case presentation simply echoes every past asbestos Chapter 11 case in which they have participated. By contrast, the Debtors' case unmistakably established that one size does not fit all asbestos Chapter 11 cases, particularly when the debtor (1) does not concede its liability to putative claimants, (2) was the target of systematic misconduct and manipulation while attempting to defend in the tort system, and (3) presents to the Court the only scientific, rules-based estimation that comports with the applicable law governing estimation under Section 502(c) of the Bankruptcy Code. Through the proper lens of applicable law, one is compelled to conclude that only Debtors presented an estimation case that recognizes and accounts for the crucial distinctions of these cases from past asbestos bankruptcies.

As it did with the initial post-trial briefs, Coltec Industries Inc. ("Coltec") relies upon and adopts the Debtors' careful dissection of the Claimants' Representatives' post-trial arguments and the evidence at the Estimation Trial and writes in response principally to emphasize certain key thematic issues.

II. THE ACC AND FCR'S POST-TRIAL BRIEFS EXPOSE THEIR FAILURE TO MEET THEIR BURDEN OF PROOF AND OFFER AN ESTIMATION METHOD WITHIN THE BOUNDARIES OF SUBSTANTIVE TORT LAW.

Comparing the ACC and FCR's Post-Trial Briefs with the Debtors' Post-Trial Brief one might conclude that the Debtors carry the burden of proof with regard to the estimation of the value of current and future mesothelioma claims. This would be backward. It is the claimants who have the burden to establish the aggregate estimated value of mesothelioma claims against the Debtors, and they failed to meet that burden in the Estimation Trial.

The court's analysis, after marshaling prior estimation decisions in diverse contexts, in *In re Frascella Enterprises*, 360 B.R. 435 (Bankr. E.D. Pa. 2007) is instructive on this point. First, the court acknowledged, "[a]n estimator of claims must take into account the likelihood that each party's version might or might not be accepted by a trier of fact. The estimated value of the claim is then the amount of the claim diminished by [the] probability that it may be sustainable only in part or not at all…. However, in performing this task, the court is bound by the legal rules which govern the ultimate value of the claim." *Id*. at 458 (citing *In re Ralph Lauren Womenswear*, 197 B.R. 771, 775 (Bankr. S.D.N.Y. 1996); *In re Brints Cotton Marketing, Inc.*, 737 F.2d 1338, 1341 (5th Cir. 1984); *Bittner v. Borne Chem. Co.*, 691 F.2d 134 (3d Cir. 1982)).[2]

[2] The cases cited by the *Frascella* court support its reasoning. In *In re Ralph Lauren Womenswear, Inc.*, the court determined that estimations should "employ whatever method is best to suit the circumstances of the case" and the estimated amount of a claim is determined by "assess[ing] the probabilities of the various contentions made by the parties passing upon [the court's] final adjudication of the . . . claim." *Id.* at 775. The Fifth Circuit Court of Appeals described the estimation task in *In re Brints Cotton Marketing, Inc.*, 737 F.2d 1338 (C.A. 5 (Tex.) 1984)(internal citations omitted) as being governed by the "legal rules which govern the ultimate value of the claim[s]" and, citing
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In allocating the burden for establishing this estimated value, the court concluded based on a review of the previous line of decisions that because claims estimation leads to a result that will function for the purposes otherwise served by claims liquidation, the estimation burden of proof should be the same as the burden of proof in claims liquidation, holding, "the burden will therefore remain with the claimant." *Id.* (citing *In re Heath*, 331 B.R. 424, 433-34 (9th Cir. BAP 2005)). Here, since the claimants are the ACC and the FCR, they bear the burden of proof.

Through the lens of the proper burden of proof, it becomes clear that not only do the Debtors have the better of the argument; the Claimants' Representatives did not carry their burden to establish either the validity or the amount of the estimated present and future mesothelioma claims. The Debtors' compelling discussion of what the parties have referred to as "the science case" demonstrated that the Claimants' Representatives did not carry their burden of proof (even on the generous and unwarranted assumption that their expert evidence is *Daubert*-qualified) with respect to the validity of the asserted claims, what the court in *Frascella* called the "probability that … [the claims] may be sustainable only in part or not at all." *Id.* The same holds true for the Claimants' Representatives' claims valuation case: Their only witnesses, Drs. Peterson and Rabinovitz, were unable to carry the burden of showing that their estimations meet any scientific standard of reliability.

Why do either burdens of proof or substantive tort law matter if we can simply copy the results of all past asbestos Chapter 11 aggregate estimations? The answer is straightforward and was provided at the very beginning of this Response: unlike the debtors in those past Chapter 11 cases, these Debtors do not concede their *prima facie* liability to the claimants. This starting

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the principle that a court should use the methods best suited for the circumstances of the individual case, affirmed the lower court's method for fixing the value of the estimated claims.

point puts these Debtors and this aggregate estimation outside the paradigm of prior asbestos defendant bankruptcies.

In one of the seminal cases on estimation under Section 502(c), *Bittner v. Borne Chem Co.*, 691 F.2d 134, 135-36 (3d Cir. 1982), the court admonished that the methods used for estimating claims must be adapted to the circumstances that warrant and require an estimation. A corollary of this point is that an estimation methodology that is not so adapted but is instead at war with the circumstances and context in which an estimation occurs fails the test for a proper estimation under Section 502(c). When the Claimants' Representatives repeat their appeal to litigation tradition and history by the constant intonation of "standard" methodology, the proper response, following *Bittner*, is to ask "standard" in relation to what context and what circumstances? An answer that merely offers "standard for asbestos bankruptcy cases" is wholly inadequate; it ignores both the fact that not all asbestos bankruptcy cases involve the same issues and questions for determination and the fact that not all asbestos debtors were similarly situated in the tort system.

In prior Chapter 11 asbestos bankruptcies where liability was not contested, the driver variables affecting the aggregate estimation were limited: the expected number of claims that might arise in the future and the amounts that would be paid to resolve essentially uncontested liabilities. For these purposes and under these limited considerations, a simple extrapolation from available disease incidence models and historical settlement values might have provided some rough proxy for what would happen if claims were actually liquidated under Section 502(c). But where liability is not undisputed, as in these cases, the Law and Economics model, thoroughly explained and dissected at trial, requires a more nuanced approach to the claims estimation methodology.

Dr. Bates provided such a nuanced approach; Drs. Peterson and Rabinovitz did not. The Claimant's Representatives' criticisms of Dr. Bates' testimony and opinions crystallize this point. They create a straw man and then kick it about with glee, refusing to grapple with Dr. Bates' model on its own terms – terms that are most appropriate in a Section 502(c) estimation where liability is contested. Dr. Bates was not attempting to model how the present and future claims against Garlock would have been resolved in the absence of bankruptcy. He was attempting instead to estimate the value of the claims according to the substantive rules of non-bankruptcy law. To complain that his model does not mirror how Debtors actually paid claims prior to bankruptcy and does not forecast how claims will be paid under a reorganization regime is not only misplaced, it is beside the point. On the question of "allowance" and "allowability" the correct legal standard to which any estimation must adhere is the value a claim would have if it were to be liquidated in accord with applicable non-bankruptcy substantive law. *Bittner*, 691 F.2d at 135-36. To chastise Dr. Bates for having undertaken a hypothetical or "idealized" exercise is to misconstrue what estimation under Section 502(c) is all about.

Because this point is so cavalierly treated by the ACC and the FCR, it is important to emphasize it in this Response. The *Bittner* court, while noting that the methods used and the evidence marshaled to estimate claims may be adapted from case to case, cautioned that in making an estimate the bankruptcy court is not free to adopt any goal other than that of determining the worth of a claim in accordance with the principles of law that would apply if the claim were to be actually liquidated. Estimation is a shorthand substitute for actual liquidation of the claims under the rules of Chapter 11, and it must therefore seek by approximation to arrive as nearly as may be possible to the results of an actual liquidation of claims. *Generally see In re: Dow Corning Corp.*, 211 B.R. 545, 563 (noting that the general rule in bankruptcy is to liquidate,

not estimate, claims and that a real concern with estimation is that it may prove to be inaccurate, i.e., not predicative of actual, liquidated values), 566 (observing that estimation and liquidation are essentially duplicative and that estimation is to be considered an abbreviated form of liquidation) (Bankr. E.D. Mich. 1997). While the methods employed to make that estimation are flexible, they cannot be used to generate a result that strays far from the results of actual claims liquidation itself, or else they violate the fundamental legal boundaries of Section 502(c).

Settlements are "some evidence" that bears on the task of estimation, but historical settlements are not equivalent to the worth of the claim if it were liquidated under the applicable principles of substantive law outside bankruptcy. Settlements are a process of negotiation based on expectations and predictions. While they are certainly one way of resolving claims, they are not the same process as liquidating those claims under substantive principles of law; thus, to rely solely upon and extrapolate an estimation number from settlements is to shun substantive law and offend the legal limits on estimation under Section 502(c).

The evidence presented by the Debtors during the Estimation Trial amply established the unremarkable proposition that settlements are not surrogates for liability. Consider the following observations, each of which illustrates the point. No principle of substantive non-bankruptcy law says that a claim is worth more if it is resolved as part of a package of multiple claims than if it is valued by itself, but as the evidence at the Estimation Hearing amply showed, claims settlements in the pre-bankruptcy context were frequently driven by bundling and linking of cases. No principle of substantive non-bankruptcy law says that a claim is worth more if the scheduling of the claim for trial (i.e., liquidation) is wholly under the control of one of the litigants, but the evidence again showed that such control of trial scheduling by plaintiffs' counsel introduced an uncertainty to defense calculations that often played a role in the settlement of claims. No

principle of substantive non-bankruptcy law says that a claim is worth more if the litigants do not fully and fairly comply with their discovery obligations, but once again the evidence showed that sharp discovery practices too often infected the settlement of claims against Debtors. No principle of substantive non-bankruptcy law says that a claim is worth more based on the existence or non-existence of insurance coverage for the claim, but once again the evidence showed that the availability of insurance and related budgeting and cash flow considerations – not liability – often influenced the settlement of claims against Debtors. On the other hand, the ability of a claimant to prove the requisite elements of substantive liability, including such elements as the fact of actual exposure to the Debtors' products, quantification of such exposures, and substantial causation of their diseases due to those exposures, ***are*** considerations under the substantive law of every state and must therefore be considered in any estimation that conforms to Section 502(c).

It is for these reasons that a naïve extrapolation of past settlements into claim "values" is not in conformity with the law of estimation announced in cases such as *Bittner* and *Frascella* and their progeny. The Court must take into account the imperfections and nuances of the negotiating process and attempt to estimate the value claims would have in the absence of such imperfections, i.e., if liquidated in accord with principles of substantive law. The only evidence presented at the Estimation Trial upon which Court can rely upon to conduct such an exercise was provided by Dr. Bates.

III. THE FCR'S ATTEMPT TO PROP UP ITS ESTIMATION EXPERT BACKFIRES, CONFIRMING THE UNSUITABILITY OF HER ESTIMATION FOR THESE CASES.

In tandem with misplaced criticism of Dr. Bates, the FCR goes to great lengths to glaze Dr. Rabinovitz's partisan, outcome driven estimate with a veneer of reasonableness. Specifically, the FCR tries to boost the credibility of her simple arithmetic by comparing her work to pre-bankruptcy accounting forecasts provided for Garlock's parent, EnPro Industries, Inc. ("EnPro"). The comparison does nothing to accomplish its purpose because it compares two very different things. The 2000 draft report by Tillinghast-Towers Perrin (FCR-49), the Oct. 13, 2004 EnPro "Asbestos Claims Internal Estimate" (FCR-37)[3], and Enpro's 2009 10-K (FCR-50), all offered by the FCR to legitimize Dr. Rabinovitz' estimation, were, as Mr. Magee explained at trial, principally prepared for external financial reporting requirements and internal corporate budgeting. They projected expected expenditures in the distorted regime of pre-bankruptcy asbestos litigation; not the value of valid claims liquidated in accordance with the rules of substantive law. (Tr. pp. 3054-55). These pre-bankruptcy accounting and budgeting estimates are incompetent to show Debtors' actual legal liability in the tort system for future mesothelioma claims, which is the appropriate subject of this estimation under Section 502(c) (*see* Debtors' and Coltec Industries Inc's Joint Motion to Exclude Loss Reserve Information (Dkt. 3053), pp. 3-5)), and the FCR's reliance on them is a confession of the bankruptcy of Dr. Rabinovitz' methodology.

As might be expected, given the different purposes and rules applicable to these pre-bankruptcy accounting and planning exercises, they employed different data points and variables than those used by Dr. Rabinovitz in her claims estimation. Two examples illustrate this: (1) the accounting estimates were all undiscounted, and (2) they embraced all asbestos-related claims,

[3] The FCR flatly mischaracterizes this "estimate" done by Mr. Magee. As he testified, Mr. Magee ran multiple alternative scenarios for his own internal consideration of the potential outcomes, and his work was never intended to meet any legal or scientific standard for valuing claims. (Tr. pp. 3155-3156). To label this an EnPro internal "estimate" is more than a little desperate.

not just mesothelioma claims. There are more examples, including the accounting estimates using different times periods and treating defense costs differently.

When a truer comparison is made, the past EnPro exercises cited by the FCR reveal mesothelioma expenditure forecasts well below Dr. Rabinovitz' inflated estimates over the same periods of time. Despite the FCR only citing the all-disease estimate of Tillinghast in its Post-Trial Brief, Tillinghast did provide a mesothelioma-only forecast, which at the high end for the period of 2010 through 2049, predicted a total mesothelioma liability of $263 Million, net present value. (FCR-49, at GST-EST-0128681.) Also, the FCR ignored the mesothelioma forecast imbedded in the 2004 EnPro "Asbestos Claims Internal Estimate", which forecasted the range of mesothelioma liability from $108 Million to $451 Million on a nominal basis. (FCR-37 at GST-EST-0108365, GST-EST-0108373). This variance between the results of the pre-bankruptcy accounting and budgeting forecasts and the results of Dr. Rabinovitz' claims estimation here – results that are touted by the FCR as being conducted according to the same purported methods – does not confirm Dr. Rabinovitz' results; it is instead further evidence of the lack of reliability or credibility of the "standard" method propounded by the Claimants' Representatives.

In an important respect, the pre-bankruptcy accounting and budgeting estimates were more truly scientific than the estimates offered by Drs. Rabinovitz and Peterson: *they actually acknowledged that the results were uncertain and highly variable.* The authors of those pre-bankruptcy exercises were careful to explain that the ranges forecast could widely vary from actual future experience of Garlock. In the Tillinghast-Towers Perrin report, it was explained that "any projection of liabilities for asbestos is subject to much greater uncertainty than . . . general and products liability exposures." (FCR-49, GST-EST- 0128565). Therefore, "it should

be recognized that future loss emergence will likely deviate, perhaps materially, from our estimates." (*Id.*) In the 2009 10-K cited by the FCR, EnPro explained that "the process of estimating future liabilities is highly uncertain." (FCR-50, p. 35). While the FCR touts the statement in that 10-K that Garlock's asbestos liabilities could exceed 1 billion, the FCR ignores the companion statement in the 10-K that "there are reasonable scenarios in which the [asbestos] expenditure is *de minimis*." (*Id.* quoting Dr. Bates). Accordingly, even if these accounting exercises were estimating the same thing to be estimated here under Section 502(c) – which they were not – they bear little evidentiary value because of their admittedly anemic ability to forecast accurately the future. Ironically, if Dr. Rabinovitz believes these historic accounting and planning exercises are comparable to her work in this case, she must also admit that her own estimates lack reliability as "point" estimates or predictions. Though she unscientifically declined to report the variability of her work in this case in her opinions or testimony,[4] by attempting to cloak her own work with the pre-bankruptcy accounting and planning estimates provided to EnPro, Dr. Rabinovitz implicitly acknowledges that the "standard" method she employs is susceptible to a variability that renders it scientifically unreliable. (Tr. pp. 4248-49).

The FCR also attempts to bolster Dr. Rabinovitz' credibility by arguing the virtue of consistency – that she approached estimating Garlock's mesothelioma liabilities using the same methods and evidence as she used in previous cases. This contention fails the test of truth. While Dr. Rabinovitz does apply the same arithmetic formula to each estimation she has undertaken, including in this case, she regularly made *ad hoc* adjustments in her assumptions and variables. In her estimations in the ASARCO, NARCO, Owens Corning, Fibreboard, and DII Industries bankruptcies, she examined multiple calibration periods, including 1 or 2-year

[4] For further discussion, please see Coltec Industries Inc.'s Memorandum in Support of Debtors' Motion to Exclude or Strike Committee and FCR Estimation Expert Witness Opinions (Dkt. 3156), p. 8-11.

calibration periods in addition to a 5-year calibration period, offering ranges for her estimate. (GST-6585, GST-6586, GST-6590, GST-6591, GST-6592, GST-6593). Here, she uncritically relied upon a 5-year calibration period only and ignored the results of any other possible calibration periods. As the Debtors point out in their Post-Trial Brief, Dr. Rabinovitz mismatched short-term nominal discount rates from the market for Treasury Securities and long-term inflation rates from the CBO, a feature which is absent from her prior estimations, where she used inflation rates and nominal risk-free interest rates from CBO reports. (Debtors' Post-Trial Brief, (Dkt. 3205), p. 146-149)). These variations matter because they call into question whether Dr. Rabinovitz' estimations are truly independent and based on scientific principles or whether, instead, they are merely outcome-driven. They suggest that far from being impartially derived, Dr. Rabinovitz estimate of Debtors' pending and future mesothelioma claims is driven by the singular goal of maximizing the amount estimated.

IV. THE ACC AND FCR'S FEEBLE EFFORTS TO DISCOUNT DR. HECKMAN'S SCIENTIFIC CRITICISMS OF THEIR EXPERTS REINFORCES HOW INAPPROPRIATE THE "STANDARD" METHOD IS FOR THESE CASES.

The failure of the ACC and the FCR to pose any legitimate counter-argument to Dr. Heckman underscores Dr. Heckman's authoritative conclusion that Dr. Peterson's and Dr. Rabinovitz' forecasts cannot be relied upon by this Court as credible estimates of the Debtors' pending and future mesothelioma claims. In its Post-Trial Brief, the ACC argued that since Dr. Heckman could not opine whether the Court should accept the actual point estimate of Dr. Peterson, his testimony is therefore useless. This argument is fallacious; it attempts to confuse the reliability of a forecast, which can be judged at the time the forecast is made, with the accuracy of that forecast, which only can be determined after the forecasted events occur.

The ACC quotes a portion of a question posed to Dr. Heckman and only a portion of his answer. (ACC Post-Trial Brief, p. 54). What the ACC does not quote is Dr. Heckman's complete answer. (Tr. pp. 4260-4261). Dr. Heckman completes his answer by criticizing Dr. Peterson and Dr. Rabinovitz for not "subject[ing] their analyses to the kind of scrutiny that many other bodies of knowledge are subject to." (Tr. pp. 4260-4261). The ACC also selectively quotes a question posed by Mr. Guy and attributes it as Dr. Heckman's answer to create the false impression that Dr. Heckman should be able to, but does not, opine whether Dr. Peterson's estimate is correct or not. (ACC Post-Trial Brief, p. 54). The full exchange bears repeating:

> Q. [Mr. Guy] Now, as I understand your testimony, you're not saying that Dr. Peterson's number's wrong; right?
>
> A. [Dr. Heckman] I said I didn't know the truth. I'm not God.
>
> Q. Right. So it could be bigger.
>
> A. Could be smaller.
>
> Q. Right. You just don't know.
>
> ***A. Nor does he.***

(Tr. pp. 4269)(emphasis added).

The omitted answer is the heart of the matter. A pure guess may turn out to be correct in fact, but such a guess is not a reliable or credible scientific prediction upon which the Court may properly rely. Dr. Heckman testified that Dr. Peterson's and Dr. Rabinovitz' estimates are unreliable and are not credible; he did not need to testify that they were wrong. Dr. Heckman made this point during his cross-examination:

> Q. (Mr. Guy) So the judge, from your testimony, has no number that he can rely upon. And from your testimony, he can't even be told whether the numbers that have been presented to him by Drs. Peterson and Rabinovitz are wrong.

A. You're confusing a concept of wrong and reliable.

Q. I understand. But that's your testimony; correct?

A. No. I talked about reliability. I didn't say whether I think they were wrong. I said I wasn't God.

(Tr. pp. 4270). The task of the estimation experts in this Trial was to create a scientifically reliable forecast of the value of pending and future mesothelioma claims against these Debtors. The ACC's attempt to parlay Dr. Heckman's intellectually honest acknowledgment of an unremarkable limitation on human precognition is disingenuous.

The ACC's response to Dr. Heckman's testimony also attempts to place blinders on the Court to the wider, scientific world of economic forecasting practiced by Dr. Heckman and Dr. Bates. The ACC is required to do so because Dr. Peterson's standard methodology cannot survive being tested under universally applicable standards of economics, econometrics, and statistics. The ACC resorts to disparaging those fields of inquiry, ones that are routinely relied upon to make practical decisions large and small, as "ivory-tower theorizing." (ACC Post-Trial Brief, p. 54). While the ACC argues that the Court should temper its view of Dr. Heckman as a mere theorist, the ACC carefully avoids confronting Dr. Heckman's true expertise. Dr. Heckman received the Nobel Prize not for "ivory-tower theorizing" but for developing "standard tools of microeconomic research and economics" which have been "applied to solving many important problems in society" and "demonstrat[ing] how solid empirical knowledge can help address important social problems." (Tr. p. 4230). The foundations of science are not "ivory towers."

Beyond their *ad hominem* attacks, the ACC and FCR decline to engage with a key aspect of Dr. Heckman's utility to the Court. Omitted from the ACC's and FCR's post-trial briefing is any response to Dr. Heckman's conclusion that even if the "standard methodology" is accepted

as valid, which it is not, the actual estimates produced by Dr. Peterson and Dr. Rabinovitz are subject to such a wide degree of statistical variance that the results are useless. (Tr. pp. 4249-4255.). At bottom, assuming that all the arguments by the Debtors and Coltec regarding the shortcomings of Dr. Peterson and Dr. Rabinovitz and their methods are set aside, their estimates, as measured by a routine statistical test, have zero predictive power to assist this Court. This simple fact, unchallenged by the ACC and the FCR, dictates that the Court give no weight to the ACC and FCR's estimation experts' opinions.

V. CONCLUSION

The ACC's and FCR's failure to carry their burden should be, by itself, determinative. It is, however, compounded by the application of an incorrect legal standard for estimation of claims under Section 502(c) and the use of a scientifically bankrupt "standard" methodology which is not adapted to the particular circumstances and reality of these Chapter 11 cases. *See Bittner*, 691 F.2d at 135-36. The asbestos bankruptcy playbook used by the Claimants Representatives has finally worn out. Respectfully, Coltec urges the Court to recognize that these Debtors are not Johns-Manville, nor are they Owens Corning, nor even are they Specialty Products Holding Corp. (Bondex International, Inc.). The Court should arrive at an aggregate estimation of present and future liabilities that respects the differences in the Debtors' products, its defenses to liability, and its pre-bankruptcy litigation history. It should arrive at an aggregate estimation that is grounded in reliable scientific principles drawn from the fields of law and economics, econometrics, and statistics and not naïve arithmetic, however dressed up in false expertise. It should arrive at an aggregate estimation that takes into account matters of equity and proportionality of these Debtors' purported responsibility among the entire group of manufacturers and vendors of asbestos-containing products. And it should arrive at an aggregate

estimation that seeks to correct for – not replicate – the imperfections and abuses that marred the pre-bankruptcy resolution (i.e., settlement) of claims in the tort system. To accomplish this with the evidentiary record presented at the Estimation Trial, the Court should follow the methods and results of Dr. Bates to render a fair, proportional, and feasible aggregate estimation.

Respectfully submitted:

This the 26th day of November, 2013.

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I hereby certify that the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following counsel of record, and was served via e-mail, to the following:

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